



April 1, 2016

California Department of Water Resources
Attn: Lauren Bisnett, Public Affairs Office
SGMPS@water.ca.gov

Subject: Draft GSP Emergency Regulations Public Comment

Dear Ms. Bisnett:

Western Growers Association appreciates the opportunity to comment on the Department of Water Resources (DWR) Draft Groundwater Sustainable Plan (GSP) Emergency Regulations. Our members are family farmers within California, Arizona and Colorado who supply people with the best medicine in the world - fresh produce. Our members grow fruit, vegetables, and tree nuts that are essential to a healthy life. Despite all of the challenges growers face, ranging from intolerant government regulations and labor shortages to immigration issues and food safety standards, our industry will always be vitally important in people's everyday lives, as we strive to ensure a safe and secure supply of nutritious food for our nation.

We appreciate DWR's outreach to the agricultural community in the development of the Draft Regulations over this past year and are pleased to see the inclusion of many suggested comments. In an effort to further improve on the Draft Regulations, which are overall generally supportable, our specific recommendations and comments are as follows:

- ❖ In the "Introductory Provisions" (Section 350) we appreciate DWR's acknowledgement that Groundwater Sustainable Agencies (GSAs) may not have all pertinent information or data needed to complete a GSP by the initial submittal date allows for needed flexibility. However, we do have concerns regarding what standard the language "sufficient reliable information" and "sufficient credible information" applies to as it could open the door to inconsistent uses by GSAs. We suggest the word "reliable" and the word "credible" are removed from these sections to maintain consistency in the standards DWR applies its analysis of GSPs.
- ❖ SGMA does not require a "Coordinating Agency" (Section 351). Although we understand that multiple GSAs in a basin will need to communicate and coordinate their efforts with each other and provide that information to DWR in a succinct coordinated manner, requiring a new governing body beyond GSAs in a basin will create conflict and unnecessary expense. We recommend "Coordinating Agency" be changed to "Coordinating Entity" and clarify that multiple GSAs can appoint a sole point of contact responsible to collect, disseminate and report data on behalf of the various Agencies within the basin to the Department.

- ❖ The “Data and Reporting Standards” (Section 352.6) should be clarified to avoid exclusion of certain wells that may not have certain data available but are still valuable for monitoring and reporting purposes. We understand the need for GSPs to be supported by adequate data that is consistent and coordinated with other GSPs in the same basin. However, the data and reporting standards should not be absolute. These prescriptive requirements would impose an unreasonable and unnecessary burden on GSAs and the regulated community.

We support allowing for the utilization of existing wells for monitoring sites; however Section 352.6(b) could be interrupted to require the construction of new monitoring sites. We request clarification that existing wells may be utilized in the development of a Plan.

- ❖ We recommend the following changes to “Description of Plan Area” Section 354.8(c):
(c) A description of existing water resource monitoring programs including, but not limited to, agricultural water management plans, urban water management plans, the California Statewide Groundwater Elevation Monitoring Program, Salt Nutrient Management Plans. To the extent existing programs require information similar to that required by this ~~Subchapter~~ Subarticle, the Plan may incorporate data from existing programs. The Agency may coordinate with the existing water resource monitoring program to incorporate and adopt the program as part of the Plan.

It would be prudent to allow a GSP to adopt the Irrigated Lands Regulatory Program for the region to satisfy certain monitoring and reporting requirements. Data from existing monitoring programs, including agricultural management plans, CASGEM and the Irrigated Lands Regulatory Program should be allowed and incorporated into all portions of the GSP not just the description of the Plan area.

- ❖ The “Notice and Communication” (Section 353.8(c)(1)) requires all comments be submitted online and include the electronic mail address of the commenter. Individuals who do not have an e-mail address should not be precluded from commenting on a GSP.
- ❖ Section 354.8 (g)(8) requires an analysis of land use planning documents outside of one’s basin and a detailed understanding of the groundwater basin within which those plans are administered in order to comply. This requirement effectively ties the entire Central Valley into one Plan, which is unworkable. We recommend the elimination of Section 354.8 (g)(8).
- ❖ We support the draft Regulation’s emphasis on notice and communication to beneficial users and interested parties (Section 354.10). It is important a GSP is well vetted by those that will ultimately be impacted by the components of the GSP and will be required to fund its implementation. Because of this important consideration, we

request section 354.10 be amended to include a provision requiring additional notification and communication be provided by a GSA when it will be discussing any fee or pumping restriction as a component of the GSP.

- ❖ We are concerned with the language in the “Water Budget” (Section 354.18) as it requires any Plan to include the water budget for the entire basin. Each Agency preparing the Plan is only able to access and utilize the resources that are available to them. It would seem more judicious to require each Plan be coordinated with the other Plans within the Basin and eliminate the need for each Plan to have a basin water budget.
- ❖ We support the draft Regulation’s emphasis on local agencies determining the sustainability goal for the basin, undesirable results of the basin, minimum thresholds for each critical parameter and the measurable objectives for each critical parameter. Subarticle 3 of Article 5 of the draft Regulations is a key part of the draft Regulations as it will guide a GSA in establishing its plan, process and criteria for achieving sustainable groundwater management. SGMA is clear that these decisions should be left to the locals in the basin and we believe the draft Regulations are in line with this SGMA mandate.

We support Subarticle 3 of Article 5 and specifically support the following sections:

Sections 354.26(b), (c) and (d), which provide GSAs with the necessary flexibility to establish different criteria for management areas and demonstrate one or more critical parameters would not lead to undesirable results in the basin, thus do not need to be analyzed. These sections acknowledge the unique characteristics that occur throughout different basins. SGMA emphasized local control and management because of this uniqueness and we support the draft Regulation’s acknowledgement of the necessity of a GSA to establish different criteria and monitoring requirements based on basin conditions.

The focus in the section 354.28 on GSAs developing minimum thresholds for each critical parameter rather than the draft Regulations prescribing a state-wide number or formula. Because each basin and portions of each basin vary greatly between groundwater conditions and land use, it would be impossible and unreasonable to apply a state-wide minimum threshold to all basins. Section 354.28 accomplishes SGMA’s objective of achieving sustainability through local management.

Section 354.28(e) furthers the necessary flexibility of a GSA in developing minimum thresholds by allowing a GSA to provide evidence to DWR that a minimum threshold is not required to be analyzed and managed in the GSP. This is an important piece of the draft Regulations as it will save GSAs and the regulated community the unnecessary

expense of analyzing an undesirable result that does not impact groundwater in the basin or portion of the basin.

We support the overall goal of section 354.30 and flexibility it gives to GSAs in establishing measurable objectives and interim milestones. We specifically support section 354.30(c), which specifies a failure to achieve objectives of the measurable objectives shall not be grounds for a finding of inadequacy of the GSP. The draft regulations, and especially this section, acknowledge and promote adaptive management, which is necessary to achieve the sustainability goal of the basin. Conditions will change over the 20 year implementation period, and a GSP should not be deemed inadequate based only on if it is unable to achieve a measurable objective.

- ❖ We recommend the following changes to the “Depletions of Interconnected Surface Water” (Section 354.28(b)(5):

Depletions of interconnected surface water. The minimum threshold for depletions of interconnected surface water shall be the rate or volume of surface water depletions caused by groundwater use that has significant and unreasonable adverse impacts on beneficial uses of the surface water. The minimum threshold established for depletions of interconnected surface water shall be supported by the following:

(A) The location, quantity, and timing of depletions of interconnected surface water. ~~If sufficient data to quantify depletions of interconnected surface water is not available, the Plan shall describe how the Agency will acquire sufficient information no later than the first five-year assessment.~~

(B) A description of the methodology ~~groundwater-surface water model~~ used to quantify surface water depletion. ~~If a groundwater-surface water model is not used to estimate surface water depletion, the Plan shall identify and describe an equally effective method or tool to accomplish this requirement, or identify provisions for developing a groundwater-surface water model capable of quantifying surface water depletion no later than the first five-year assessment.~~

- ❖ Section 354.28 (e) allows a GSA to provide evidence to DWR that a minimum threshold is not required to be analyzed and managed in a GSP. However, the requirement a GSA support its determination by “clear and convincing evidence” is an inappropriate standard and should be replaced with “substantial evidence” or “sufficient data.”
- ❖ We support the overall goal of “Measurable Objectives” (Section 354.30) as it gives GSAs the flexibility in establishing measurable objectives and interim milestones.
- ❖ A GSP’s “Monitoring Networks” (Section 354.34(a)(5)) should not be required to identify the impacts of an adjacent basins ability to meet the sustainability goal. While we agree it is important that basins are not adversely impacting each other, this determination would be too onerous and costly. We request Section 354.34(a)(5) be removed.

- ❖ We support the overall flexibility and control granted to local agencies to determine monitoring programs, density of monitoring sites and assessment of monitoring networks as provided in Subarticle 4 of Article 5. It is critical for the GSP to be developed acknowledging each basin and each portion of the basin is unique and faces its own set of challenges. Because of this, monitoring may be required more extensively in some areas than others. Subarticle 4 of Article 5 accomplishes SGMA's goal of providing GSAs flexibility to manage the basin and portions of the basin as the locals find appropriate to achieve basin-wide sustainability. This flexibility also saves the GSA and regulated community from the excessive burden and expense of monitoring in areas where it is unnecessary.

We specifically support the following:

Section 354.34(c), which allows a GSP to incorporate site information and monitoring data from existing sources into the monitoring data, including existing groundwater management plans, CASGEM data and the Irrigated Lands Regulatory Program.

Section 354.34(d), which allows the density and frequency of measuring to be determined on specific factors and conditions in the basin. We suggest this also be utilized in the data collecting, reporting and management area sections.

Section 354.36, which allows each GSA to designate a subset of monitoring sites of monitoring as representative of conditions in the basin or an area of the basin for the purpose of establishing minimum thresholds, measurable objectives and interim milestones. We support the flexibility of this section to allow a GSA to monitor based on the unique characteristics and conditions of the basin and tailored to the stakeholder interests for that area of the basin.

Section 354.38, which recognizes basins may not have the ability to collect all data required to fully implement its GSP by the initial GSP submittal and implementation dates. We support the draft Regulation's establishment of a section to allow a GSA to identify these data gaps, reasons for the data gaps and a plan to fill data gaps as the GSP is implemented.

While we are supportive of the overall goal of this section, we recommend section 354.34(c) be amended to allow a GSP to utilize the management, program and implementation structures of existing groundwater monitoring networks. For example, if a GSA chooses to utilize data from the Irrigated Lands Regulatory Program, the GSA should be able to work with the Coalition(s) to receive the aggregated data the Coalition gathers and submits to the Regional Water Board as a part of the GSP. The GSA should not be required to collect the data already collected by existing programs and

plans, but should be able to utilize this data to form a GSP in a more efficient and cost effective manner.

We suggest the following language be added at the end of Section 354.34(c): The Agency may coordinate with the existing water resource monitoring program to incorporate and adopt the program as part of the Plan.

- ❖ Several provisions within “Criteria for Plan Evaluation” (Section 355.4) require an Agency’s Plan to manage at the basin level without any legislative requirement or authority to do so. We recommend the following changes:

Change 355.4 (a) (3) to read: The Plan covers the entire ~~basin~~ Plan area and is coordinated with all other Plans within the basin.

Change 355.4 (b) to read: The Department shall evaluate a Plan that satisfies the requirements of Subsection (a) to determine whether the Plan is likely to achieve the sustainability goal for the ~~basin~~ Plan area. When evaluating whether a Plan is likely to achieve the sustainability goal, the Department shall consider the following:

Change 355.4 (b) (6) to read: Whether the Plan will adversely affect the ability of an adjacent ~~basin~~ Plan(s) to implement their groundwater sustainability Plan(s) or impede achievement of sustainability goals within the basin or in an adjacent basin.

- ❖ The “Coordinating Entity” (Section 355.10) is responsible for conflict resolution within a basin. The concept of a single entity acting as an arbiter of disputes within a basin is inconsistent with SGMA and there is no legal authority or mandate to form such an entity. It would be helpful to clarify that disputes within a basin shall be the responsibility of the Coordinating Agency, identified and appointed through a basin coordination agreement, or other entities responsible for managing Plans and alternatives within that basin.
- ❖ A GSA should be allowed to aggregate groundwater extraction data and determine the best process for collecting and analyzing the extraction data. Section 356.4(b)(2) allows groundwater extraction data to be aggregated before submission to DWR. We support this aggregation, but do not support DWR’s specific requirements on how the data be aggregated and presented. A GSA should be allowed the flexibility to determine the best process for collecting, analyzing and aggregating groundwater extraction data. This will allow the GSA to utilize existing data and programs that collect and aggregate this data and manage data based on the specific conditions of the basin and portions of the basin.

We propose, section 356.4(b)(2) be amended as follows:

(2) Annual aggregated data identifying groundwater extraction for the preceding water year. Data shall be collected from the best available measurement methods and ~~shall be presented in a table that summarizes groundwater extractions by water use sector, location of extraction, and identifies the method of measurement (direct or estimate) and accuracy of measurements, and a map that illustrates the general location and volume of groundwater extractions.~~

- ❖ We agree that “Coordination Agreements” (Section 357) between GSAs located within the same basin are necessary to meet the requirements of SGMA and the regulations. However, how the GSAs will be coordinated should be left to the GSAs within the basin. The inclusion of “Submitting Agency”, an undefined term, seems inconsistent with SGMA and fails to acknowledge the authority of each Agency to prepare, administer, implement and report on their respective Plans. We recommend striking “Submitting” and replacing it with the word “Coordinating” Agency wherever found in Article 8.

Thank you for your consideration of these comments. Western Growers Association looks forward to working with you as these Emergency Draft Regulations are refined so they provide the needed tools to local GSAs to sustainably manage their groundwater.

If you have any questions, please do not hesitate to contact me at gdelihant@wga.com or 916-284-4734.

Best regards,

A handwritten signature in black ink, appearing to read "Gail Delihant". The signature is fluid and cursive, with the first name "Gail" being more prominent than the last name "Delihant".

Gail Delihant
Director, CA Government Affairs